

## 8-000 EARLY INTERVENTION MEDICAID HOME AND COMMUNITY-BASED WAIVER

### 8-001 INTRODUCTION

#### A. General Introduction and Philosophical Base

The Nebraska Medical Assistance Program (NMAP) offers, under a waiver of statutory requirements, home and community-based services to infants and toddlers who have care needs which meet a care level typically provided in a nursing facility (NF).

Eligible infants and toddlers are children under the age of three who have been verified for special education and related services as identified in the Nebraska Department of Education Rule 51 and any subsequent revisions. A child is eligible for services under this waiver through the end of the school's fiscal year, August 31, in which the child reaches age three. Waiver services are limited to infants and toddlers who are currently receiving services as defined under Nebraska's Early Intervention Act to implement P.L. 99-457, the federal Individuals with Disabilities Education Act, Part H. The Early Intervention Act was established to help families of infants and toddlers with disabilities identify, use, and coordinate a variety of services. Community agencies work together so that services and resources meet the needs and wishes of the family in the most efficient and supportive way. This system is based on the following philosophical assumptions:

1. Services should be child-focused and family-centered, recognizing that the family is the constant in a child's life. This supposes the family's right to determine its level of involvement in services as it relates to their child's disability.
2. Personnel at all levels need to have an understanding of and a commitment to the collaborative process.
3. Services should reflect a range of options, be community based or as close to the home as possible, and provide opportunities that support participation in the community.
4. Services for young children and their families should be flexible, functional, and responsive to changing family needs.
5. Empowerment of families should be a goal for service providers. Family services should be directed toward maximizing the family's capacity to function.
6. Services provided to the family should enhance the development and dignity of the infant or toddler.

The Department shall provide opportunities for fair hearings as defined in 42 CFR 431, Subpart E, to legal representatives of infants and toddlers who are not given the choice of home and community-based services as an alternative to NF services or who are denied the services of their choice (see 465 NAC 2-001.02 and 2-006 ff.).

B. Legal Basis

Section 1915(c) of the Social Security Act permits the Health Care Financing Administration (HCFA) to approve waivers of statutory requirements requested by the states. Federal regulations concerning home and community-based waivers are 42 CFR 440.180 and Part 441, Subpart G.

Sections 43-2501 through 2516, Reissue Revised Statutes of Nebraska, 1943, requires the Department of Social Services to apply for and implement a waiver to serve infants and toddlers with disabilities and their families.

Nebraska's Family Policy Act (Sections 43-532, 43-533, and 43-534, R.R.S., 1943) directs state agencies to provide assistance under the philosophy of family-centered, community-based services.

C. Administration

The Nebraska Department of Social Services is the single state agency that administers Nebraska's Home and Community-Based Waivers.

Department of Social Services Activities

As the single state Medicaid agency the Department of Social Services is responsible for waiver administration. DSS activities include -

1. Obtaining waiver approval and reapproval from HCFA;
2. Establishing policies and procedures to implement the waiver;
3. Determining a child's level of care eligibility for the waiver;
4. Approving individualized family service plans (plans of care);
5. Monitoring expenditures under the waiver;
6. Performing on-site reviews to determine compliance with waiver requirements;
7. Performing case record reviews;
8. Maintaining statistics;
9. Conducting training;
10. Providing technical assistance and consultation to contracted services coordination providers;
11. Checking the Department's child and adult abuse/neglect registries to determine if any substantiated reports of abuse or neglect by the family's chosen provider exist;
12. Processing billings for services provided; and
13. Reporting required data to HCFA.

### Services Coordination Activities

Services coordination contracted providers assume services coordination activities. These include -

1. Identifying infants and toddlers who may be eligible for the Early Intervention Waiver;
2. Gathering all information needed to determine waiver eligibility and forwarding to DSS program representatives for level of care determination;
3. Determining the estimated total monthly cost of Medicaid services, including waiver services, and comparing the estimated cost to the Medicaid monthly payment for care in an NF. This dollar amount is referred to as "the cap";
4. Offering the parent/guardian the choice of nursing facility or waiver services;
5. Arranging waiver respite care while maintaining the parent/guardian's freedom of choice in providers;
6. Including the provision of respite services through the Early Intervention Waiver in the child's individualized family service plan (IFSP);
7. Providing follow-up and ongoing monitoring of the provision of waiver respite care; and
8. Providing narrative documentation to support waiver case actions.

## 8-002 CHILD ELIGIBILITY

### A. Child Eligibility Criteria

To be eligible for waiver services, the child must -

1. Be under age three (Note: The child remains eligible through the end of the school's fiscal year, August 31, in which the child reaches age three);
2. Not be receiving services under any other home and community-based services waiver;
3. Reside outside an institutional setting or any other facility licensed by the Department of Health;
4. Be verified for special education and related services, as identified in the Nebraska Department of Education Rule 51 and any subsequent revisions;
5. Be participating in Nebraska Early Intervention services coordination;
6. Meet nursing facility level of care criteria (see 471 NAC 12-002 ff.), but for the availability of a home and community-based services waiver;
7. Have costs under Medicaid which do not exceed the cap;

8. Have a parent/legal guardian who has received an explanation of Nursing Facility (NF) services and waiver services and elected to receive waiver services (Form DSS-5AD); and
9. Be determined eligible for the Nebraska Medical Assistance Program (NMAP) as a Medicaid Waiver child (Note: DSS regulations allow for family income to not be considered in determining Medicaid eligibility for children who may require care in an institutional setting).

B. NF Level of Care Criteria

To be eligible for waiver services, a child must have care needs which meet a care level typically provided in a Nursing Facility (NF). The Department of Social Services' admission criteria for a NF is based upon complexity of service and/or the need for professional services (471 NAC 12-002 ff.). Waiver level of care eligibility is determined by DSS program representatives.

8-003 ELIGIBILITY PROCESS

The services coordination contracting agencies for the Nebraska Early Intervention Program shall ensure that all infants and toddlers not otherwise eligible for Medicaid and who require Nursing Facility level of care services will be offered Early Intervention Medicaid Home and Community-Based Waiver services.

A. Initiating Process

After an infant or toddler with disabilities has been determined eligible for the Nebraska Early Intervention Program, the assigned services coordinator shall initiate the process of determining if the child is eligible for Early Intervention Waiver services. The services coordinator shall -

1. Explain the Early Intervention Waiver and determine if the family is interested in waiver services;
2. Document the family's interest in the case narrative;
3. Collect all information needed to determine the care level required to meet the child's needs (e.g., current medical information, applicable IFSP pages, educational records, etc.) and forward to DSS program representatives for a level of care determination; and
4. Assist the child's family to apply for the Nebraska Medical Assistance Program (Medicaid) through the family's local DSS office.

Note: At any point after the parent/guardian requests waiver services, s/he may voluntarily withdraw from receiving waiver services.

B. Determining Level of Care

DSS program representatives determine whether or not the child meets the NF level of care criteria based on information submitted by the services coordinator.

If the child does meet the NF level of care criteria, DSS program representatives indicate approval of the level of care and return all information used to determine level of care to the services coordinator.

If the child does not meet the NF level of care criteria, DSS program representatives shall complete a written notice informing the child's parent/legal guardian that the child is not eligible for waiver services. Written notice is returned to the services coordinator for distribution to the family. All information used to determine the child's level of care is also returned to the services coordinator.

C. Determining Cost of Medicaid Services

If the child meets the NF level of care criteria, the services coordinator, together with the family, shall estimate the total monthly cost of Medicaid services, including waiver services, provided to the child and compare that cost to the cap. Irregular expenditures (e.g., hospitalizations and equipment) anticipated in the next 12 months must be prorated.

If the estimated monthly cost of Medicaid services does not exceed the cap, the services coordinator shall obtain parental consent for the child to participate in the waiver. (See "Eligibility Process", "D".)

If the estimated monthly cost of Medicaid services exceeds the cap, the services coordinator shall complete written notice informing the child's parent/legal guardian that the child is not eligible for waiver services.

D. Obtaining Parental Consent for Waiver Participation

When the child's level of care, Medicaid cap costs, and Medicaid eligibility have been determined, the services coordinator shall offer the child's parent/legal guardian the option of accepting NF or waiver services. This decision is recorded on Form DSS-5AD, "Waiver Consent Form."

E. Notifying Family of Waiver Eligibility

The services coordinator shall send written notice to the family confirming that the child is eligible for the waiver. The eligibility date for services may be no earlier than the date the consent form is signed.

F. Arranging Waiver Services

After obtaining parental consent for waiver participation, the services coordinator shall give to the family a waiver respite provider enrollment contract to be completed by the family's provider of choice. The provider signs the contract and returns it to the services coordinator.

The services coordinator shall forward the enrollment contract to DSS program representatives for a check against the Department's child and adult abuse/neglect registries. If no substantiated reports of abuse or neglect by the provider exist, the contract shall be returned to the service coordinator for inclusion in the child's case record. The services coordinator notifies the family that the provider is approved as a waiver respite care provider.

If the proposed provider does not comply with all the respite provider standards, or a substantiated report of abuse or neglect does exist, the services coordinator shall notify the family that waiver funds are not available to purchase respite care from that provider.

Note: Any respite care provider certified, approved, or enrolled under other Nebraska Home and Community-Based Waivers may be a provider for this waiver based on the provider agreement currently in effect.

G. Negotiating Provider Rates

The family is allowed up to \$100.00 per month per child in service payments which will be made to respite care providers to pay for respite care. Rates are negotiable between the family and provider. The services coordinator may provide supports the family needs in dealing with provider enrollment and rate negotiation.

H. Adding Services to the Child's Individualized Family Service Plan (IFSP)

Respite care funded through this waiver shall be added to the child's Individualized Family Service Plan (IFSP) (plan of care). The IFSP must specify the services to be provided; identify the agencies and/or persons responsible for services delivery; and specify the amount and frequency of service provision.

The agencies and/or persons responsible for services delivery may not be identified on the IFSP, nor may service delivery begin until the provider has been approved as a waiver respite care provider.

I. Redetermining Eligibility

Level of Care

When the services coordinator receives information that the care needs of a child eligible for the waiver have changed, s/he shall determine whether a new level of care determination is necessary and initiate the determination.

Cost of Medicaid Services

The services coordinator shall compute a Medicaid cap at least annually. This may be done at the time of the IFSP annual review.

J. Denying or Terminating Eligibility

Eligibility for services under the waiver may be denied or terminated for any of the following reasons:

1. A child does not meet the specified eligibility criteria;
2. The parent/guardian has not signed necessary forms consenting to waiver services;
3. The parent/guardian voluntarily withdraws;
4. The child moves out of Nebraska;
5. The death of the child; or
6. The agency loses contact with the family and their whereabouts are unknown.

K. Notice of Adverse Decisions

If a child becomes ineligible for waiver services, the services coordinator shall send written notice to the parent/guardian. Notice of termination of services must be mailed at least ten calendar days before the effective date. Notices must contain -

1. A clear statement of the decision;
2. A clear statement of the reason for the decision;
3. A specific policy reference which supports the decision; and
4. A complete statement of the parent/guardian's right to appeal.

No notice need be sent to the parent/guardian in the following situations:

1. During an IFSP periodic review or annual meeting, a determination is made that waiver services are no longer needed, and the parent/guardian requests that the child's case be closed;
2. The services coordinator learns of a child's death;
3. The child is committed to an institution or admitted to a nursing home on a long-term basis;
4. The family's whereabouts are unknown; and
5. The services coordinator has verified that waiver services are being provided in another planning region to which the child has moved.

L. Notifying the Provider of Termination of Payment

The family is responsible for notifying the provider that payment for waiver services will be terminated.

M. Appealing Actions

Families have the right to appeal the following actions:

1. Refusal to accept a request for waiver assessment;
2. Failure to act upon a request;
3. Failure to offer the choice between Home and Community-Based Waiver Services and NF services;
4. Denial of eligibility;
5. Denial of services; and
6. Termination of the waiver.

#### 8-004 RESPITE CARE SERVICES

Respite care is designed to prevent out-of-home placement by providing temporary relief to the usual caregiver from the continuous support and care of an infant or toddler with a disability. Components of respite care are supervision, care of the child's physical needs, and responsibilities related to the child's developmental and psychological needs.

Respite care may be provided in the child's home or out of the home. If respite is provided by a hospital or nursing facility, the child will not be considered a facility resident for the purposes of the waiver. Respite care may include three meals per day (a full nutritional regimen) only when service is provided in a facility approved by the State and is not a private residence.

The usual caregiver is defined as a person who resides with the child and has 24-hour per day responsibility for the child's care and supervision.

Providers paid for service/care provided to the child through other Title XIX (Medicaid) services are not eligible to receive respite care payment under this waiver.



## 8-005 RESPITE CARE PROVIDER STANDARDS

Services provided through this waiver should empower families. Families choose their own provider(s), and it is the responsibility of the provider to comply with all waiver respite care provider standards, adhere to those standards, and verify compliance through self-certification.

A waiver respite care provider may be an individual or agency that is enrolled as meeting all applicable federal, state, and local laws and regulations. Waiver respite care providers are Medicaid providers: Providers shall -

1. Protect the confidentiality of child and family information.
2. Respect family choices, beliefs, and values.
3. Have experience and demonstrated abilities to meet the needs of infants and toddlers with disabilities or medical needs; and
4. If outside the child's home, ensure that the facility or home is safe and free from hazards.

### A. Reports of Abuse or Neglect

If the provider is an individual, the Adult Protective Services and Child Protective Services Central Registries shall be checked to determine if any substantiated reports of abuse or neglect by the provider exist. If a report of abuse or neglect has been substantiated, a contract shall not be entered into with the individual provider.

If a report of abuse or neglect concerning a current waiver provider as perpetrator is substantiated, the provider contract shall immediately be terminated.

If an individual provider provides services in his/her own home, s/he shall certify that no household member has perpetrated child or adult abuse or neglect

If the waiver respite care provider is an agency, the agency shall certify that policies are in effect regarding hiring and reporting to ensure that appropriate procedures regarding abuse or neglect are in place.

### B. Criminal Behavior

An individual provider shall certify that neither s/he nor any household member (if the service is provided in his/her home) has committed crimes against a child or vulnerable adult.

### C. Provider Enrollment Duration

Approved provider enrollment contracts are effective as long as the provider continues to comply with waiver respite provider standards.

D. Provider Terminations

Either party to an enrollment contract may terminate a contract by giving at least 30 days advance written notice. The 30-day requirement may be waived in case of emergencies such as illness, death, injury, or fire.

A provider enrollment contract may be terminated immediately if the provider fails to comply with waiver respite provider standards at any time.

E. Provider Record Keeping

Providers of waiver services must maintain for five years the following material:

1. Documentation which supports provision of services to each child served under the waiver.
2. Any other documentation determined necessary by the Department of Social Services to support selection and provision of services under an IFSP (plan of care).
3. Financial information necessary to allow for an independent audit under the waiver.
4. Documentation which supports requests for payment under the waiver.
5. Provider enrollment contracts.

8-006 EARLY INTERVENTION WAIVER RECORDS

A. Record Content

The services coordination contracting agency must maintain the following waiver material:

1. All forms related to waiver eligibility;
2. Narrative documentation;
3. Determinations of NF level of care;
4. IFSPs (plans of care);
5. All written notices to families;
6. Provider enrollment contracts; and
7. Provider billing and payment records.

Waiver records must be retained for five years.

B. Narrative Documentation

Services coordination narrative must include dated chronological documentation of the following -

1. Communication with the family, noting the service coordinator's location (e.g., office, family home);
2. Communication with service providers;
3. Services coordinator decisions and action; and
4. Other factual information and services coordination activity relevant to the case.

C. Record Transfer

The sending services coordination contracting agency shall send to the receiving services coordination contracting agency original or copies of pertinent waiver case record material with written parental authorization.

D. Forms

The following forms are used to implement the Early Intervention Waiver:

1. Level of Care Determination (see 480-000-104)
2. Consent Form (see 480-000-34)
3. Notice of Action (see 480-000-10)
4. Respite Provider Enrollment Contract (see 480-000-105)
5. Billing Document (see 480-000-106)